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TENNESSEE:

UNITED STATES DEPARTMENT OF JUSTICE

UNITED STATES ATTORNEY'S OFFICE
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

UNITED STATES OF AMERICA,

PLAINTIFF,

VS.

CASE NO. 23-MJ-02033

JOSIAH ERNESTO GARCIA,

DEFENDANT.

AUDIO TRANSCRIPTION OF HEARING
BEFORE THE HONORABLE
JEFFREY S. FRENSLEY

TUESDAY, APRIL 19, 2023

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AUDIO TRANSCRIPTION OF HEARING**BEFORE THE HONORABLE****JEFFREY S. FRENSLEY****TUESDAY, APRIL 19, 2023****BAILIFF:** All rise.**THE COURT:** Thank you. Be seated.

Good afternoon everyone and welcome. We are here in the matter of United States of America v. Josiah Garcia. It's case number 23MJ2033. Mr. Garcia is present in the courtroom today along with his attorneys. And Ms. Schiferle is here for the United States. This is a continuance of the detention hearing we started yesterday. Before we get started, Ms. Schiferle, are there any announcements from the Government?

MS. SCHIFERLE: No, Your Honor.

THE COURT: All right. Very good. Are you ready?

MS. SCHIFERLE: Yes.

THE COURT: All right. Thank you. Mr. Fletcher, any announcements before we get started, or are you ready?

MR. FLETCHER: Yes, Your Honor. We're ready. We have, I'm going to call Mr.

1 Garcia's sister, Naomi Diaz. And just for the
2 record, Your Honor, she drove about six hours
3 here. I didn't ask her to drive here. I told
4 her this could be video, but I got an email at 3
5 this morning, and she felt the need to be here
6 because she wanted to support. So I'll call her
7 and ask her a few questions.

8 **THE COURT:** All right. Very good.
9 Ma'am, if you'd step up.

10 **COURT CLERK:** Would you please
11 raise your right hand? Do you solemnly swear or
12 affirm that the testimony you give in this case
13 will be the truth, the whole truth, and nothing
14 but the truth?

15 **(WHEREUPON, no audible response.)**

16 **COURT CLERK:** Could you please
17 state your name for the record and spell your
18 last name?

19 **WITNESS:** Heather Naomi Diaz, D-I-
20 A-Z.

21 **COURT CLERK:** Thank you. Please
22 have a seat.

23 **MR. FLETCHER:** May I proceed, Your
24 Honor?

25 **THE COURT:** You may.

1 **HEATHER NAOMI DIAZ**, having been duly sworn by the
2 CLERK, was examined and testified as follows:

3 **DIRECT EXAMINATION**

4 **BY MR. FLETCHER:**

5 Q. All right. Ms. Diaz, could you please
6 tell the Court where you live?

7 A. I live in Amanda, Ohio. 5635
8 Chillicothe Lancaster Road.

9 Q. And exactly how far is that from
10 Nashville?

11 A. About six-and-a-half-hour drive.

12 Q. And do you live alone?

13 A. No.

14 Q. Who lives with you?

15 A. My husband, Kendal Diaz, and my three
16 daughters, Natalia Hamilton. She is 11. Harley
17 Diaz, she's three. And Kendal Diaz. We named
18 her after him. She's one.

19 Q. Okay. And how long have you and your
20 husband been married?

21 A. Seven years.

22 Q. And do you work?

23 A. Not currently.

24 Q. Did you work? Well, how long have you
25 been out of work? I guess I should ask that.

1 A. Whenever I got pregnant with my
2 daughter Harley, COVID happened. Daycares got
3 closed down, and I couldn't put her in daycare
4 whenever I could take her to daycare, so I lost
5 my job. But I was an operations manager for YRC-
6 3.

7 **THE COURT:** Mr. Fletcher, she's
8 got three kids. She's probably working harder
9 than any of us.

10 **MR. FLETCHER:** Agree, Your Honor.

11 **CONTINUATION OF DIRECT EXAMINATION**

12 **BY MR. FLETCHER:**

13 **Q. Does your husband work?**

14 A. Yes.

15 **Q. And what exactly does your husband do?**

16 A. He is a maintenance supervisor. He
17 works for Magna Seating.

18 **Q. Okay. And could you describe exactly**
19 **what he does there?**

20 A. He's a boss. He hires. He fires. He
21 also fixes things.

22 **Q. Okay. And how long has he been**
23 **employed there?**

24 A. Whew. We lived in Bowling Green,
25 Kentucky before we moved to Ohio. So, he

1 transferred when COVID happened. Approximately
2 13, 14 years.

3 Q. Okay. And how are you related to Mr.
4 Garcia?

5 A. He's my brother.

6 Q. And how often do you speak with him?

7 A. Well, we used to text and call each
8 other on and off, I mean, his whole life.

9 Q. And when was the last time you spoke?

10 A. On Easter.

11 Q. And when did you become aware of this
12 incident, the current incident that we're here
13 for today?

14 A. The day my mom called me, telling me
15 that the FBI came to her house and that Josiah
16 had got arrested.

17 Q. So, the last time you spoke with him
18 was before he was arrested?

19 A. Correct.

20 Q. And the only way you found out about
21 this was through your mom?

22 A. Yes.

23 Q. Okay. And other than that, was there
24 any other information that you received about
25 what had happened with your brother?

1 A. No. Other than the news and what you
2 read out there, absolutely not.

3 Q. Okay. And so let's go back to your
4 home. Will you describe your home for me? Just
5 describe, like, how your home is set up.

6 A. Okay. I have a four-bedroom, two-bath.
7 I don't use the downstairs. The downstairs is
8 like an apartment. It has a bedroom, a living
9 space, and also a bathroom on its own. And then
10 the upstairs has a main, main room, living room,
11 dining room, kitchen. And then the third floor
12 has the girls up there with two bedrooms.

13 Q. Okay. And based on our previous
14 conversations that we've had, isn't it true that
15 you previously stated to me that if Mr. Garcia
16 were to be released, he would be living in the
17 apartment in the bottom ...

18 A. Yes.

19 Q. Okay. And is your home located in the
20 city or is it in the suburbs?

21 A. I want to say more or less the country.

22 Q. Okay. And so, if Mr. Garcia were
23 released, you know by now that he would probably
24 have a difficult time finding employment?

25 A. Yes.

1 Q. But would you be willing to assist him
2 in gaining employment?

3 A. Yes. And so would my husband Kendall.

4 Q. Okay. So, I'll ask you about you agree
5 to be a third-party custodian. We spoke about
6 this a few weeks ago. And I just want to go over
7 those, what you would be needing to do as a
8 third-party custodian. You know what that means,
9 that you will be responsible for assisting him in
10 compliance with all the Court's orders or rules
11 that it puts in place, if the Court was to
12 release your brother?

13 A. Yes. I do realize that.

14 Q. And you know this might mean having to
15 transport him to and from Nashville for court
16 hearings that he'll have in the future. Would
17 you be willing to do that?

18 A. Yes.

19 Q. Do you know that this might also mean
20 contacting probation, myself, or any of the
21 authorities if your brother fails to comply with
22 these rules?

23 A. Yes.

24 Q. Would you be willing to do that?

25 A. Yes.

1 Q. Would you be willing to do that,
2 knowing that if you contacted them, this could
3 land him back in jail?

4 A. Yes.

5 MR. FLETCHER: Your Honor, I think
6 that's all I have for now, Your Honor.

7 THE COURT: All right. Thank
8 you. Ms. Schiferle, do you have any questions
9 for this witness?

10 MS. SCHIFERLE: Please.

11 CROSS EXAMINATION

12 BY MS. SCHIFERLE:

13 Q. Good afternoon, Ms. Diaz.

14 A. Afternoon.

15 Q. Thank you for making that long drive to
16 be here today. It's important for all of us when
17 someone is coming here and proposing to be a
18 third-party custodian, it's important for all of
19 us to see you in person and be able to sort of
20 have a real conversation about what that means.
21 So, we appreciate you being here. I have a few
22 questions for you.

23 When you stated a moment ago that you'd
24 be able to help your brother have transportation
25 back and forth here, I'm a mom, too.

1 Logistically, how would that work for you with
2 your husband working, I assume full-time, and
3 having three kids at home?

4 A. My husband is salary, and he also has a
5 lot of vacation time he could take. And he
6 watches the girls whenever that happens. Like
7 today.

8 Q. Okay. So, he's taking vacation time
9 today ...

10 A. Yes.

11 Q. ... to be home with the girls so you
12 could come here?

13 A. Yes.

14 Q. Okay. And that's something that he
15 would continue to be willing to do any time that
16 your brother had to be in Nashville for court?

17 A. Yes.

18 Q. Okay. And it's not just when there is
19 a court appearance, but he could also potentially
20 be required to, you know what, I was going to say
21 he might have to come down and meet with a
22 probation officer, but I think they would have
23 someone in Ohio for him to meet with. So,
24 disregard that. So, you've read the news
25 articles?

1 A. I have.

2 Q. About this case? Have you read the
3 actual document that charged him, the criminal
4 complaint?

5 A. I've read the complaint.

6 Q. Okay. What did you think?

7 A. It's mind-blowing. It's, I know he was
8 under a lot of pressure, a lot of stress. There
9 were things after he graduated, you know, that I
10 knew that he was going through. It's, it's mind-
11 blowing. It's a little disappointing to actually
12 think that, you know, there's a world out there
13 where he thought that was okay to do. But I
14 think that his judgement was probably clouded by
15 that as well, from stress.

16 Q. Okay. So, the last time you spoke with
17 him was on Easter?

18 A. Yes.

19 Q. It must be additionally mind-blowing
20 when you look at the dates and realize that he
21 was texting undercover on Easter Sunday about
22 having a meeting to get a job as a hitman. Do
23 you think his stress level is going to go down if
24 he's released and goes to stay with you?

25 A. I believe that I can help him relieve a

1 lot of the stress that he was in, and I could
2 definitely guide him in the right direction that
3 he would need to go.

4 **Q. I think from some of the testimony that**
5 **we heard yesterday and from some of the**
6 **statements that your brother made, some of that**
7 **stress came from a pressure on him to contribute**
8 **to the household monetarily; is that right?**

9 A. Correct.

10 **Q. Okay. How is it that you'd be able to**
11 **help him alleviate that stress?**

12 A. Me and my husband already have a plan
13 to get him a job, and where my husband works,
14 it's only about seven miles away from our house.
15 We have two vehicles. I know he has one. I'm
16 not sure if he'll be able to use that or not.
17 Transportation is not a problem. And giving him
18 a place to stay. Food's never a problem either.

19 **Q. So just so I understand, it wouldn't**
20 **relieve his obligation to send money back home to**
21 **Mom and Dad, but you'd help him get a job to be**
22 **able to make that money?**

23 A. Correct. And I would not let him send
24 money home to Mom and Dad. I am so sorry, but
25 that is their responsibility.

1 Q. I didn't catch when you said the name
2 of the company your husband works for.

3 A. Magna Seating of Columbus.

4 Q. And what kind of company is that?

5 A. They make seats for vehicles.

6 Q. Oh, okay.

7 THE COURT: You said seats?

8 WITNESS: Yes.

9 THE COURT: Okay.

10 CONTINUATION OF CROSS EXAMINATION

11 BY MS. SCHIFERLE:

12 Q. And your husband supervises the
13 maintenance department?

14 A. Yes.

15 Q. Okay. What kind of job does he think
16 that he would be able to get your brother?

17 A. Operational job. Any line work
18 probably.

19 Q. I'm sorry? Line work. Is he the
20 ultimate say of someone who gets hired there, or
21 just enough to go through some upper ...

22 A. HR.

23 Q. Okay. And do you know if he had
24 consulted HR to find out if they would employ
25 someone who's on release for a federal charge for

1 **murder-for-hire?**

2 A. As of right now, since everything
3 happened so quickly, he's in the process of doing
4 everything.

5 Q. Okay.

6 THE COURT: Ms. Schiferle, I don't
7 think he's charged with murder-for-hire.

8 MS. SCHIFERLE: He is. He's
9 charged with using an instrumentality of
10 commerce.

11 THE COURT: Right.

12 MS. SCHIFERLE: It's a murder-for-
13 hire statute.

14 THE COURT: I'm sorry?

15 MS. SCHIFERLE: It's the murder-
16 for-hire statute.

17 THE COURT: Okay.

18 MS. SCHIFERLE: I mean, I think
19 that's how it would appear. Use of interstate
20 commerce facilities in the commission of murder-
21 for-hire.

22 **CONTINUATION OF CROSS EXAMINATION**

23 **BY MS. SCHIFERLE:**

24 Q. So, you haven't been able to get a
25 final answer on that; is that what you're saying?

1 A. Correct.

2 Q. Okay.

3 MS. SCHIFERLE: I think those are
4 all my questions.

5 THE COURT: Mr. Fletcher, do you
6 have any questions?

7 MR. FLETCHER: Yes, Your Honor. I
8 just have one question.

9 THE COURT: Yes. Sure. Go ahead.

10 REDIRECT EXAMINATION

11 BY MR. FLETCHER:

12 Q. Ms. Diaz, could you just explain for
13 the Court, and we've had this conversation
14 before, why you believe that your brother would
15 have less stress coming back home to you versus
16 going back to his home?

17 A. Whew, that is a long story. He was
18 under a lot of financial stress ever since he
19 graduated boot camp. Should I just say the whole
20 story?

21 Q. I mean, just explain. Again, when we
22 spoke about why you believe that your home would
23 be best. I guess I should ask, when you said
24 your husband and you would be able to provide for
25 Mr. Garcia.

1 A. Yes.

2 Q. Would he have to immediately begin
3 working if he were released to you?

4 A. Oh, no. He wouldn't have to
5 immediately begin working. He could actually
6 have room to breathe.

7 Q. So even if your husband is unable to
8 find him employment, he would still be taken care
9 of?

10 A. Yes.

11 MR. FLETCHER: Thank you. Your
12 Honor, that's all I have.

13 THE COURT: All right. Had the
14 defendant talked to you at all about his
15 interests in participating in some sort of career
16 as being a hitman?

17 WITNESS: No.

18 THE COURT: Okay.

19 WITNESS: I'm not sure he
20 actually understood what that meant in a way.

21 THE COURT: What makes you say
22 that?

23 WITNESS: His stress level.
24 Financial situations. I feel like it clouded his
25 judgement. I mean, even when you read the

1 articles, why would you apply as a hitman online?
2 Why would you leave any type of paper trail? Why
3 would you put your real address? There had to be
4 something there that clouded his judgement. And
5 I know my parents. I'm not going to cash in on
6 them, but I know how I grew up, and I got out of
7 it. And he was homeschooled his whole life. So,
8 I feel like his judgement toward many things has
9 been clouded.

10 **THE COURT:** Do you have concerns
11 that if he's under your roof that he will
12 continue to exercise poor judgement in a way that
13 you can't deal with?

14 **WITNESS:** No.

15 **THE COURT:** Why is that?

16 **WITNESS:** I have rules. And I
17 would not allow that in my house.

18 **THE COURT:** And if there was
19 something that he was doing that was either in
20 your mind something you couldn't abide by or was
21 a violation of some condition of his release,
22 what would you do under those circumstances?

23 **WITNESS:** Confront him, and if
24 it's need be, let everybody else know. Whoever I
25 need to let know.

1 **THE COURT:** Okay. And you
2 wouldn't have any problem doing that?

3 **WITNESS:** It hurts, but he's 21.
4 I wouldn't have an issue with it.

5 **THE COURT:** Okay. Anybody need to
6 follow up on any of that?

7 **MR. FLETCHER:** No, Your Honor.

8 **THE COURT:** Ms. Schiferle?

9 **MS. SCHIFERLE:** No, Your Honor.

10 **THE COURT:** All right. Very good.
11 All right. Ms. Diaz, thank you very much. I
12 really appreciate you being here. You can step
13 down.

14 **WITNESS:** Okay.

15 **THE COURT:** You're welcome to stay
16 in the courtroom. Watch your step there.

17 **(WHEREUPON, the WITNESS was excused.)**

18 **THE COURT:** All right. Mr.
19 Fletcher, do you have any proof you want to put
20 on?

21 **MR. FLETCHER:** That's all, Your
22 Honor.

23 **THE COURT:** All right. Thank
24 you. Ms. Schiferle, does the Government have any
25 other proof you want to put on? I'll let you put

1 on anything you want.

2 **MS. SCHIFERLE:** No, Your Honor.

3 Thank you.

4 **THE COURT:** All right. Very good.

5 Thank you very much. Want to be heard?

6 **MS. SCHIFERLE:** Please. "When can
7 I start? I am ready. I've been looking into
8 this for a long time. I am excited." Those are
9 just some of the quotes that Your Honor court in
10 this courtroom yesterday come straight out of the
11 defendant's mouth when talking about being
12 employed as a hired killer.

13 On the first recorded phone call
14 that he had with the undercover, of all the
15 questions in the world, his first one was, "When
16 can I start?" And the second was, "How much
17 money can I make?" The conversation then turned
18 to specifics. They talked about torture and
19 taking trophies, body parts. He was fine with
20 that. "If it's within my abilities, I'm fine
21 with it." And the thing that makes that part
22 ring true is the fact that they then talked about
23 sexual assault. And the defendant there drew the
24 line. "I'm not going to rape anybody, but I'll
25 torture them. I'll cut off their ear. I'll cut

1 off their finger. I'll shoot them from afar."

2 He was thinking it through.

3 He asked about what would happen
4 if he got caught, if the company would back him
5 up, what he should do to make sure it doesn't
6 come back to him. Again, thinking it through the
7 steps.

8 At the in-person meeting, he said,
9 "I am excited. I am ready." The UC gave him
10 many opportunities to back out. He basically
11 tried to talk him out of it. The UC said to him,
12 and I'm paraphrasing, "You've got a lot going on.
13 You have college. You have the military. Is
14 this really what you want to do?" The defendant
15 said yes. He said he had considered the
16 psychological effects of killing someone and that
17 he was okay with it.

18 And then at the deal, he was given
19 more opportunities to decline. It's true, the
20 first question he asked of the undercover in
21 person was, "Do I have to do this?" Because the
22 undercover said no, and are you having any second
23 thoughts, and the defendant said no.

24 And a very important factor here
25 is that what he said after he took that target

1 package and he took the money. After he took the
2 details about the fictional Peter Mitchell and
3 the photos of that person and all of his details
4 and \$2,500 cash, he then told the UC what his
5 next steps were going to be. He said, "I'm off
6 next weekend, so I'm going to go scope it out.
7 I'm going to drive up to Kentucky and check out
8 the area where this person lives." He already
9 had steps in place.

10 And then the undercover asked him,
11 "Hey, did you buy that Sig yet?" There were some
12 previous conversations where the defendant talked
13 about that he wanted to buy a Sig Sauer handgun.
14 And he said, "No, but now I have the money to do
15 it. Now I have the money to buy more guns."

16 So what am I going to do now with
17 this target package and this money? Two things.
18 I'm going to go surveil the location where I need
19 to kill somebody, and I'm going to buy more guns.
20 Not, I'm going to go rush home and give this
21 money to Mom to help pay the rent. I'm going to
22 get back in my 2020 BMW that I drove to this deal
23 and go drive up to Kentucky and scope it out and
24 then buy some more guns.

25 He was so excited about this

1 opportunity that he told his family about it. He
2 told his mom and he told his brother about this
3 great money-making opportunity that he had. He
4 told him it involved high-end targets like
5 federal judges and human traffickers.

6 He had the tools. He wasn't just
7 talking. He thought facts through. He thought
8 through his next steps. And he had the tools and
9 the skills. He had the firearm. We know that
10 because it's now been recovered from his bedroom.
11 He had the ammunition. And he had the skills.
12 He was taught shooting skills in the Air Force.

13 There's an adage I try to apply in
14 my own life. When someone tells you who they
15 are, listen. The defendant's own words are the
16 most powerful evidence in this hearing, and there
17 is no reason why any of us should question their
18 veracity. He said he would kill people for
19 money. He said he will kill numbers of them.
20 Fifty, that's rookie numbers for the Reaper. He
21 said he would torture them, take ears and fingers
22 as trophies as necessary.

23 He's young, and he has no criminal
24 record. And those are things that we often talk
25 about in this courtroom that would predict future

1 behavior and show that someone's dangerous, but
2 the absence of a criminal record and the fact
3 that he is young don't mean that we shouldn't
4 take his own words seriously.

5 If he didn't find rentahitman.com,
6 while admittedly he was online looking for paid
7 mercenary jobs, he would have found something
8 else. Someone who has the tools and has the
9 skills and has the desire for the money and wants
10 to go out and kill people will find that
11 opportunity.

12 He made a mistake. He chose a
13 website that's not the real thing, and he ended
14 up talking to an undercover officer. Thank God.
15 He could and would find real options. There are
16 hired killers in this world, in this district,
17 every day. And he very well could have been one
18 of them. Having a job at Vanderbilt or having a
19 job working in operations for a company that
20 makes seats, while that's certainly gainful
21 employment and would help him be a productive
22 member of society is not going to give him the
23 kind of money that he was eyeing for this kind of
24 work.

25 Your Honor, I submit that despite

1 his youth and his lack of criminal record, this
2 defendant is a danger to society and to specific
3 people who are targets of hired killers. I ask
4 you to detain him.

5 **THE COURT:** Ms. Schiferle, what
6 exactly is the danger that I need to protect the
7 community from with regard to Mr. Garcia at this
8 point?

9 **MS. SCHIFERLE:** He's expressed a
10 willingness and an interest to murder people for
11 money. I don't see how that miraculously goes
12 away. Someone who has thought through to the
13 point that he did, where he will perform certain
14 acts and not others, has the skillset and has
15 access to the weapon, granted that weapon has now
16 been seized, but there's no reason to believe
17 that that suddenly goes away and he's suddenly
18 going to go up to Ohio and do the right thing
19 with his sister and not get right back on the
20 internet or fall in with some unsavory characters
21 in Ohio and find some ways to make real money.

22 **THE COURT:** So you think that if I
23 let him out, he's going to commit a murder-for-
24 hire? He's going to murder somebody is what
25 you're saying? That's the danger that I need to

1 protect from?

2 **MS. SCHIFERLE:** I mean, I
3 certainly think it's possible. The other jobs
4 that he was looking for, hired mercenary work,
5 are equally as dangerous to society. I just
6 think we need to take this defendant at his own
7 word. That's what he wants to do. He wants to
8 get a job that fits his skillset.

9 **THE COURT:** So when he had the
10 meeting on, was it April the 6th where he said he
11 wanted to murder the person who was abusing the
12 girlfriend ...

13 **MS. SCHIFERLE:** Right.

14 **THE COURT:** ... do we not need to
15 take him at his word then?

16 **MS. SCHIFERLE:** Thank you for
17 reminding me. I do think that that was an
18 important part of that interview, and that's why
19 I introduced the clip of it yesterday. I think
20 that when you heard him say, "Everything in me
21 wanted to go and shoot him," that also showed
22 that not only do I have this desire to take this
23 skillset and employ it in a job where I'll get
24 fired, but I also just sort of view human life as
25 expungable. And if someone is causing a problem

1 for me, being abusive to an ex-girlfriend, that's
2 within my arsenal of things that I can do to fix
3 that.

4 Now of course as the conversation
5 evolved, I think what made it ring more true,
6 someone of us say all the time, right, "I wanted
7 to kill him." It's something people say. Do we
8 put value in it? I think in this context, yes,
9 we do. And an important fact is that later in
10 the conversation, he said to the undercover, "In
11 fact, I've been waiting to ask you about it." So
12 maybe I didn't feel comfortable doing it myself,
13 but you hire other killers, so you could hire
14 someone else to do it. And then he went on to
15 say that the only reason he didn't want to kill
16 that man or hire someone to kill that man was
17 because it would make the ex-girlfriend sad. So
18 that again shows a weighing. Right, I'm thinking
19 this through. I'm seriously considering killing
20 this person or hiring someone else to kill this
21 person, and then I've decided not to because it
22 might make her sad.

23 Well, what happens when she gets
24 back in touch with him, and the boyfriend beat
25 her up so bad, and now it's not going to make her

1 sad? Then that barrier in his mind to the
2 killing is removed.

3 **THE COURT:** So, you think that
4 that communication means that he's a danger from
5 this point going forward, but law enforcement
6 apparently didn't believe that it was enough of a
7 danger between that time and the time when he was
8 ultimately arrested, over a week later? They
9 felt okay leaving him out when he said that, but
10 now that's a reason to detain him?

11 **MS. SCHIFERLE:** Sure. I
12 understand Your Honor's question. But my answer
13 is that the undercover at the time he had that
14 meeting with the defendant, he had a concern and
15 said to him repeatedly, "Don't kill anybody.
16 Promise me." They shook hands at the end of it.
17 And the undercover felt confident that he wasn't
18 going to kill anybody because that would
19 jeopardize his employment relationship with the
20 undercover.

21 **THE COURT:** So, we can feel
22 confident based on a handshake at the meeting,
23 but we can't feel confident based on a court
24 order and supervision?

25 **MS. SCHIFERLE:** I understand Your

1 Honor's point, but I think that there, I don't
2 really think they're equals in this exact
3 situation. The undercover is trained in dealing
4 with these specific situations, and he felt
5 confident in that moment that he's not an
6 immediate danger to that person, to that specific
7 person, because we have an agreement. It didn't
8 mean that he didn't think he's not a danger to
9 society, but we didn't have enough to arrest.
10 He had to go through with the exchange of the
11 target package and the money to make the arrest.
12 So he was at liberty for one more week to allow
13 the FBI to put together an operation to properly
14 charge him. He was always deemed a danger to
15 society, but it was during that one week, okay,
16 we don't think he's going to go kill the ex-
17 girlfriend's new boyfriend because he really
18 wants this job. I think that's sort of a very
19 specific situation in a vacuum.

20 Going on federal release several
21 states away, I don't think has the same power
22 over him, quite frankly.

23 **THE COURT:** What does several
24 states away have to do with it?

25 **MS. SCHIFERLE:** Well ...

1 **THE COURT:** I mean, you said it.
2 So, what does it have to do with it?

3 **MS. SCHIFERLE:** I did. I mean, I
4 think it just makes him a little removed
5 theoretically from the obligations of the court.
6 Perhaps, easier to flee.

7 **THE COURT:** So, you think he's a
8 flight risk?

9 **MS. SCHIFERLE:** I don't. I'm
10 relying on dangerousness here.

11 **THE COURT:** Okay. You talked
12 about the undercover officer and their training.
13 Were my notes correct when I wrote down that the
14 undercover officer said to him that, "Talking to
15 our company about this is not a crime"? Is that
16 what the undercover officer said?

17 **MS. SCHIFERLE:** That's correct.

18 **THE COURT:** Isn't that in fact
19 what he's charged with? Using interstate
20 commerce? Isn't talking to the company about
21 murder-for-hire exactly what the crime is?

22 **MS. SCHIFERLE:** I think what he
23 was trying to relay to him is that this
24 conversation on the own isn't enough for the
25 crime, which is actually why he wasn't charged on

1 April 6th. There has to actually be a promise to
2 pay or an actually receipt of something of
3 pecuniary value, which then occurred when he
4 actually made an agreement to kill a specific
5 person.

6 **THE COURT:** If a telephone was
7 never used, if there was no instrument of
8 interstate communication used, if they just met
9 and had this meeting and an agreement was made,
10 could he be charged under this statute?

11 **MS. SCHIFERLE:** He could for
12 driving a vehicle to the location to meet with
13 the undercover.

14 **THE COURT:** Okay.

15 **MS. SCHIFERLE:** There's three
16 different theories in the complaint of interstate
17 commerce which is the internet, the phone, and
18 the vehicle.

19 **THE COURT:** Okay. Talking about
20 the communications from the undercover agent, the
21 specific murder that was proposed, that was
22 something created by the agent, right?

23 **MS. SCHIFERLE:** The identity of
24 the target?

25 **THE COURT:** Yes. And the

1 background story around that, right?

2 **MS. SCHIFERLE:** Yes.

3 **THE COURT:** And it could have been
4 anybody, right? I mean, they could have chosen
5 any scenario for a murder, right?

6 **MS. SCHIFERLE:** Yes.

7 **THE COURT:** And is it just a
8 coincidence that they chose a scenario that they
9 already knew he was really concerned and upset
10 about, a woman being abused by a man?

11 **MS. SCHIFERLE:** The only way I can
12 answer that question is to tell Your Honor about
13 the conversations that I had with the team in
14 preparation for the ops, and there were a lot of
15 discussions about what that person should be. I
16 left it to the agents. I frankly, I think they
17 chose that because it's just the most common
18 scenario. I don't, as an officer of the court,
19 believe that it was chosen based on his comments
20 a week earlier that it was, you know, something
21 he was concerned about in his own personal life.

22 **THE COURT:** You don't think so?

23 **MS. SCHIFERLE:** I don't, but I let
24 the agents make that choice of who the target was
25 going to be, so I cannot speak to whether that

1 was a factor in their minds. But based on the
2 conversations that we had, we discussed should it
3 be a witness in a case, you know, what kind of
4 back story should there be. And at the end, I
5 left it to them.

6 **THE COURT:** Okay. One of the
7 things you've referred to a lot is this nickname,
8 the Reaper. And I just want to make sure I
9 understand the proof that I heard. The only
10 proof I heard about the source of this nickname
11 Reaper is from videogaming, right? There wasn't
12 any other evidence that he was referred to as the
13 Reaper in any other context, was there?

14 **MS. SCHIFERLE:** No. And that's
15 all coming from statements from the defendant
16 himself. He has the tattoo that says Reaper, and
17 in the conversation with the undercover, he sort
18 of presented that as that's my nickname. Even
19 says on his resume, "Earned nickname, Reaper."
20 The source of that being as like initially used
21 in a video game, I think just came out in the
22 post-arrest interview.

23 **THE COURT:** But you don't have
24 any, at least none was presented to me ...

25 **MS. SCHIFERLE:** No.

1 **THE COURT:** ... that there's any
2 other source of that name than his video gaming
3 activities, right?

4 **MS. SCHIFERLE:** Nothing except his
5 resume. His resume says something like, "Earned
6 nickname Reaper for marksmanship," or something.
7 I don't have that in front of me. But he gives
8 his own characterization.

9 **MR. FLETCHER:** Your Honor, it's
10 the second page of Exhibit 3.

11 **MS. SCHIFERLE:** "Nickname Reaper
12 earned from military experience and
13 marksmanship."

14 **THE COURT:** Okay. All right.
15 Thank you, Ms. Schiferle, ...

16 **MS. SCHIFERLE:** Thank you.

17 **THE COURT:** ... for your argument.
18 Mr. Fletcher?

19 **MR. FLETCHER:** Your honor, first
20 and foremost, I want to respond to some of the
21 things that opposing counsel brought up, and then
22 I'll get directly into my argument. Your Honor,
23 Counsel stated that she lives by the adage that
24 when someone tells you who they are, you should
25 listen. You know, frankly, Your Honor, if we all

1 live by that, we would be in a really messed up
2 position because what we do know is that people
3 lie. We do know that people lie.

4 And that's one of the things that
5 I believe that has come out in the proof over the
6 last few days that Mr. Garcia did. First and
7 foremost, Your Honor, there is no evidence, Your
8 Honor, that Mr. Garcia is a marksman. The
9 evidence we do have is that he was a Guardsman at
10 the gate for over two years in Air National
11 Guard. We don't have any other kind of proof
12 that, one, he used the AR15, that he used the
13 other gun that was found that was a training gun.
14 And for that matter, your honor, we do not have
15 any evidence that he ever used the gun at all.
16 Not even as a Guardsman at the Air National
17 Guard. So there was an opportunity, Your Honor,
18 for the agents to verify that he was the
19 marksman, but we don't have that. We don't have
20 any kind of evidence other than what he said, and
21 again, he put this on his resume that he earned
22 this from his military experience, the nickname
23 Reaper, Your Honor. But again, we have no other
24 evidence or proof to determine or verify that he
25 ever shot a gun. That's the one thing here that

1 we do not have, that he ever shot a gun.

2 I also disagree, Your Honor, with
3 council saying that he thought all this through.
4 That's not what happened. He didn't think all
5 this through. You heard on the clips almost
6 every time he communicated with one of the
7 officers, Your Honor, everything that he said was
8 in response to something that an officer asked
9 him or that the agent asked him. He wasn't
10 coming there with any of these scenarios in his
11 head. He was responding to everything that they
12 asked him, Your Honor. And overall, what I
13 believe this case to be was the use of the
14 naivety of a 21-year-old who was under duress who
15 was trying to get a lot of money.

16 While this obviously can be viewed
17 as a foolish way to try to get money, Your Honor,
18 this wasn't him bringing this up in his own mind,
19 and I'm not taking away from the fact that he
20 went and he actually applied to be a hitman. I'm
21 not taking that away, and nothing that I say I
22 want to relate that it makes it seem like I'm
23 trying to lessen the seriousness of these
24 charges, Your Honor. But what the proof has
25 shown is that every time he communicated with the

1 agents, the concerning things, Your Honor, were
2 things that the agents made up themselves. The
3 agents made up the stuff about the torture. He
4 never came and said anything, and he even told
5 them every time they brought up torture on the
6 clips, you heard every single time they brought
7 up torture, which I believe was three different
8 times, he would say, "Within my means." That's
9 what he responded to the agents.

10 When he met with them in person,
11 again, the first thing he said was, "Do I have to
12 accept it?" And while I do recognize that he did
13 accept the money, Your Honor, I do believe that
14 it's plausible that he was scared. He's a 21-
15 year-old who's never done anything like this
16 before in his life.

17 He's a 21-year-old that the
18 evidence has shown that he had a job at
19 Vanderbilt. So this was not the only, he wasn't
20 only looking for mercenary jobs. He wasn't only
21 looking for hitman jobs or anything like that.
22 He was looking for other employment. And he got
23 the job at Vanderbilt. And there was an
24 opportunity to verify that, but that was not
25 corroborated by the agents that he got a job at

1 Vanderbilt.

2 And yesterday, Your Honor, the
3 issue about him telling his family about what he
4 wanted to do, he clearly lied to his family about
5 what he was trying to do. And I think it's
6 obviously that he didn't want his family to know
7 exactly what he was doing because even with what
8 he was doing, they tried to talk him out of it.
9 That was the proof that came out yesterday.
10 That's what they told Agent Hunter when they
11 spoke with him is that they tried to talk him out
12 of it. As wild as it may seem to us, Your Honor,
13 and as off base as it may seem to us, Your Honor,
14 I do genuinely believe that his family genuinely
15 believed that this was some kind of legal
16 governmental job that he was doing, being some
17 kind of a CIA special assassin. And for that
18 matter, Your Honor, I just don't believe that has
19 family was condoning him doing something illegal
20 in particular.

21 But we've heard a lot, and Counsel
22 basically put on her whole case, Your Honor. But
23 we did not hear was what we're here for, Your
24 Honor. The Court has to make a determination
25 about whether to detain or release Mr. Garcia

1 based on the factors that he's a danger to the
2 community and he's a flight risk. Your Honor, I
3 submit that there is no evidence that he's a
4 flight risk. He's never been to court. He's
5 never had traffic ticket. Never has had a need
6 to go to court, and so the mere argument that he
7 might be a flight risk if he goes to Ohio, if the
8 Court releases him to there, if the Court
9 releases him back to Nashville with his
10 community, it's pure speculation to say that he's
11 a flight risk. We have absolutely no evidence
12 that he's a flight risk.

13 What we do know, Your Honor, and I
14 believe that this can be said, I would submit is
15 that he's a rule follower. I mean, he followed
16 the rules to the T with what the agent was
17 saying. He sent everything he needed to send in
18 for the application, Your Honor. He talked with
19 the agent every time the agent spoke with him.
20 When he apparently had the opportunity to go
21 shoot someone, he listened to the agent when the
22 agent said, "Don't do anything." And I would
23 submit, Your Honor, that a part of that
24 conversation was that he did say that, "I'm not
25 going to do it because I don't want my girlfriend

1 to be hurt," or, "my ex-girlfriend to be hurt,"
2 Your Honor. At this point, Your Honor, we don't
3 even know that there was a girlfriend present.
4 We'd be of no clue that there was ever a
5 girlfriend, Your Honor. This was just a
6 conversation where the agent was obviously lying
7 to Mr. Garcia, and Mr. Garcia was lying to the
8 agent. So I don't think that you can believe him
9 for his word with everything that he told the
10 agent, everything that he responded to the
11 agent's question. I don't think that you can
12 believe him and take him to his word because I
13 think there are a lot of inaccuracies and a lot
14 of things that weren't true in his resume, with
15 the things he was telling the agent.

16 And Your Honor, just simply, he
17 had the gun well before these meetings even
18 started. He had the firearm. He had the
19 ammunition. When they got the ammunition, well,
20 first of all, Your Honor, we don't even know when
21 this firearm was bought. We know that it was
22 purchased before he had conversations with the
23 undercover agent. But we don't know when it was
24 purchased. We don't know that when they took the
25 firearm, we didn't even know that they took the

1 magazine with it. There was opportunity to say,
2 well, some of this was used, some of the bullets
3 in the gun were used. We don't even know that.
4 What we know now is that there was never a gun
5 shot. He never shot the gun. If he was
6 dangerous, Your Honor, it wouldn't have taken him
7 getting paid to go and shoot someone. He could
8 have done that on his own because he had the gun
9 well before he started talking to the undercover
10 agent.

11 So being that there is no flight
12 risk, Your Honor, the obvious issue right now
13 that we will have to fight about is the danger to
14 the community issue. Your Honor, I will submit
15 that everything that has been presented to this
16 Court over the last two days to say that Mr.
17 Garcia is a danger to the community is pure
18 speculation. When we come before the Court,
19 normally, Your Honor, we have a number of things
20 that we can look back on in someone's criminal
21 history to determine that, yes, they're a danger
22 to the community, or a danger to the community
23 because this, this, this happened. They're a
24 flight risk because this, this, and this
25 happened. Mr. Garcia's PSR is I believe two

1 pages long. Maybe three pages long. But what's
2 absent from it is any kind of criminal history.
3 Any kind of criminal history. We don't know that
4 he's had any issue with mental health. We don't
5 know that he's had any issues aside from mental
6 health issue that would warrant a finding that
7 he's dangerous.

8 He, in the most odd way, Your
9 Honor, went about the wrong way of trying to get
10 money, and again, I do believe that if we can say
11 that he genuinely wanted to change his mind and
12 his plan was to lay the money on a corner, get
13 back in the car, and leave, Your Honor. He never
14 had that chance. He never had the chance. As
15 soon as he walked off, two to five minutes later,
16 he was arrested. So he never had the chance to,
17 like, go with his plan to leave the money on the
18 corner. I think it would be a little more
19 plausible, Your Honor, to allow him to go
20 forward, drive the car off or whatever, and do
21 what he's going to do. If they thought he wasn't
22 this dangerous when he said that he wanted to
23 kill his ex-girlfriend's boyfriend, then they
24 couldn't have thought he was this dangerous when
25 he took the money to try to go kill some person

1 that he didn't know.

2 But most importantly, Your Honor,
3 I just don't see that as being evidence of
4 dangerousness. Mainly because, again, this is
5 speculation about what he was going to do. He
6 had this gun for a number of months before all of
7 this took place, and if he had that gun, he could
8 have used the gun, and that, Your Honor, in any
9 way, at least if he had used the gun and shoot
10 cans, Your Honor, I feel like that's a little bit
11 closer to saying that he's dangerous than just to
12 say just because he had this gun he's dangerous.

13 The Government used a photo from
14 Facebook. It was selected use of photos from
15 Facebook, Your Honor, to show that this is when
16 he bought the gun, but we know that he could have
17 bought the gun at any point and posted this gun.
18 And it could have just been posted on the day
19 that he happened to be or around the time that he
20 happened to be talking to the undercover agent.
21 But I submit, Your Honor, that the gun was
22 purchased months before that. He had this gun.
23 He never used the gun, Your Honor, and there's
24 been no proof put on to show that he's dangerous
25 because he used this gun.

1 He talked about the Sig, Your
2 Honor. I believe that there were conversations
3 beforehand that he should have bought the Sig or
4 he could have bought the Sig, Your Honor.
5 Obviously, he didn't buy the Sig. He said that
6 he could have bought the Sig with the money and
7 whatever, Your Honor. But what we do know is
8 that he's a legal gun owner. He had the AR-15
9 legally. He could have got the Sig legally, but
10 he didn't get it legally. But more importantly,
11 Your Honor, he just didn't use it. He didn't use
12 the gun, the AR-15. He never bought the Sig.
13 He never bought the Sig to try to help his
14 chances out of getting this job, Your Honor. And
15 that's mainly because he was responding to
16 everything that the agent was telling him at the
17 time.

18 I do believe, Your Honor, that his
19 sister, who is here today, I believe that the
20 proof that was put on through her testimony, Your
21 Honor, shows that she would be a good third-party
22 custodian. I think that this would probably be
23 just a better environment overall for Mr. Garcia
24 to go back to. We know that her husband has a
25 job. Her husband's actively trying, without even

1 knowing if he could be released. Her husband's
2 actively trying to see if he can get Mr. Garcia a
3 job employed where he is. Mr. Garcia will not be
4 in an environment where he's bunked up in a room.
5 He'll have his own space that's generally away
6 from the other occupants in the home, Your Honor.

7 And I think most importantly what
8 Ms. Diaz said was that the stress that he was
9 under that led him to this incident in the first
10 place, Your Honor, he will not have while he's
11 staying with her. She said that she could
12 provide for him up until the time that he gets a
13 job, and even if he didn't get a job, Your Honor,
14 if he's unable to get a job, she'll still be able
15 to provide for him. And I think that that's
16 important, Your Honor, because we're taking him
17 out of the situation that he would have gone back
18 to, Your Honor, that led to him being under this
19 kind of duress, being under this stress, where
20 he's unable to get money and is trying to get
21 this money to help his family out.

22 I think that detaining him based
23 on the evidence presented again is just detaining
24 him on speculation, Your Honor, that he's a
25 danger to the community. Recognizing that these

1 are serious charges, Your Honor, but this is
2 literally the bare minimum. We don't have any
3 evidence that he's ever used guns. We don't have
4 any evidence that he's ever been violent towards
5 anyone. We don't have any evidence that anyone
6 in his family has been violent towards anyone.
7 So we can't even say that he grew up in an
8 environment where there was violence. We can't
9 even say that he's engaged in school at any time
10 or in social circles, Your Honor, where he was
11 around people who were violent, Your Honor. We
12 don't have any of that evidence, Your Honor, and
13 I would submit that that's because the evidence
14 is not there.

15 I think that we cannot overlook
16 the fact, Your Honor, that there were points in
17 time that even on those clips that Mr. Garcia
18 expressed hesitation. Again, the first thing
19 that he asked the undercover agent when he met
20 with them was, "Do I have to accept this?" And
21 the only thing that we can gain from that, Your
22 Honor, is that there was some kind of hesitation
23 expressed. And I do think that in speaking with
24 the undercover agent at many different times,
25 there were things said about the Reaper thing,

1 Your Honor.

2 Like, as far as I know, Your
3 Honor, the Reaper thing could be something from
4 Marvel movies, the Punisher. I've spoken with
5 Mr. Garcia, and I'll proffer, Your Honor, that
6 again is something that's connected military
7 units. Agent Hunter confirmed that yesterday
8 that that tattoo is connected to military units.
9 It has nothing to do with violence, Your Honor.
10 And if it does have anything to do with violence,
11 Your Honor, we didn't get that proof over the
12 last two days.

13 So I do believe that there are a
14 combination of conditions that the Court can set,
15 Your Honor, that will reasonably ensure that Mr.
16 Garcia is not a danger to the community because
17 we have no evidence that he would be a flight
18 risk at all. The only evidence that he's a
19 danger to the community right now, Your Honor,
20 right now presently is just speculation that he
21 would do something that, for all we know, has
22 never been his character. Never been his
23 character before, even with his military
24 background. We have no clue that he's ever used
25 a gun. We have no clue that he's a marksman. We

1 have no clue that he could have done what he said
2 he was going to do. He never shot the gun, Your
3 Honor.

4 So I would submit that if the
5 Court would allow him to return to his sister's
6 house, I think she'd be a great third-party
7 custodian, Your Honor. I think that there are
8 even additional conditions that the Court could
9 set that would reasonably ensure that the
10 community is safe. That could be in the form of
11 home detention. That could be in the form of GPS
12 monitoring. There's no history of substance
13 abuse issues that has come out in proof. We
14 don't have any kind of issues with substance
15 abuse. And so I do believe that based on the
16 proof and what has come out over the last few
17 days, I would ask the Court to release Mr. Garcia
18 to his sister's home, under the standard
19 conditions and any conditions that the Court
20 finds necessary to ensure that Mr. Garcia is not
21 a danger to the community.

22 **THE COURT:** Mr. Fletcher, you
23 talked a lot about speculation, but as you
24 probably know, that's really what the detention
25 determination is trying to predict what's going

1 to happen in the future. And first of all, let
2 me ask you what you think about Ms. Schiferle's
3 argument about what the actual danger is, that
4 there's a risk that he'll engaged in similar
5 conduct that will be successful in its ends,
6 resulting in murder?

7 **MR. FLETCHER:** Your Honor, I don't
8 think that there's any merit to that argument,
9 Your Honor, because she didn't put on any
10 evidence that he ever used a gun to start off
11 with. She didn't put on any evidence that he
12 truly thought about this his self. I recognize,
13 Your Honor, that this whole thing started alleged
14 because he reached out to this site. I recognize
15 that, Your Honor. I would also recognize that
16 this entire thing happened or whatever because he
17 was under pressure. His mom testified yesterday
18 that at that time, they needed money. He had
19 just gotten out of the Army. He was looking for
20 other work. And they needed money to pay their
21 rent. I think that because ...

22 **THE COURT:** Well, I don't think
23 he'd been in the Army, had he? I thought there
24 was some idea that he was going to have a
25 different job with the Air Guard, and then

1 something went awry and it ended up only being a
2 one-weekend-a-month or something like that.

3 That's what my recollection the mother testified.

4 **MR. FLETCHER:** I'm sorry. He was
5 doing that, Your Honor, but when that ended,
6 that's when kind of the duress started. I would
7 submit, Your Honor, that that's when they needed
8 money. He needed money to help his parents pay
9 their rent. I just don't think that those issues
10 would be present if he was at his sister's house
11 because it's a more stable home. She testified
12 that they can take care of him whether he had a
13 job or not.

14 But I think that the idea that
15 he's going to go out and start shooting someone
16 you or reaching out to another website, I don't
17 believe that to be plausible, Your Honor, because
18 again, he had this gun months before he ever
19 started talking to the undercover agents. If he
20 was going to do something, Your Honor, that we
21 should be worried about, it would have and could
22 have happened before then. He didn't need to
23 speak with anyone to go use the gun. He could
24 have shot the ex-girlfriend's boyfriend if he
25 wanted to. He had the means to do it, and he

1 didn't do it, Your Honor.

2 **THE COURT:** Okay. Thank you.

3 Ms. Schiferle, I'll give you the
4 last word if you want it since it's the
5 Government's burden.

6 **MS. SCHIFERLE:** Thank you, Your
7 Honor. Just a few counterpoints. First, when we
8 introduced the photograph of the gun that was
9 posted on Facebook, it was not intended to be an
10 insinuation that he purchased the gun on that
11 day. It was intended to show that that's what he
12 was thinking about ...

13 **THE COURT:** You're not talking
14 about the paintball gun; you're talking about the
15 other one?

16 **MS. SCHIFERLE:** Correct. The AR.
17 He posted the picture of the AR with the caption
18 that said, "She's beautiful," on February 20th,
19 the same day when he's exchanging messages with
20 rentahitman.com. So the point of introducing
21 that picture and the timing was to show that
22 that's what's on his mind. He's emailing
23 rentahitman.com, trying to get this job, and then
24 at the same time, posting about how his gun is
25 beautiful, right? So those things are sort of

1 part and parcel of what's going on in his mind.
2 That was the point of that evidence.

3 The other comments I want to make
4 are just regarding the third-party custodian.

5 **THE COURT:** Before you do that,
6 what does that mean? What's the significance of
7 that? You said it's what's going on in his mind.
8 But what does it mean for purposes of these
9 proceedings?

10 **MS. SCHIFERLE:** Right. So that
11 that was the tool he had available to get that
12 job. So I'm simultaneously applying for this
13 job, telling this company that I have this
14 skillset and they should hire me, and then while
15 I'm doing that, I'm thinking about my gun and
16 posting a picture of my gun on social media and
17 talking about how it's so beautiful.

18 **THE COURT:** Okay. But he didn't
19 send any of those posts to the parody website,
20 did he?

21 **MS. SCHIFERLE:** No.

22 **THE COURT:** Okay. All right.
23 Okay. I think I follow you.

24 **MS. SCHIFERLE:** It was just
25 simultaneous internet activity.

1 **THE COURT:** Okay. I follow you.

2 **MS. SCHIFERLE:** Regarding the
3 proposed third-party custodian, the defendant's
4 sister certainly seems to be an upstanding member
5 of society. I don't have any critique of her
6 personally. The two points that I would just
7 make are that there's no guarantee he can get
8 this job in Ohio, and so if it's a condition of
9 his release to be employed, I don't think there's
10 any evidence that he definitely has that ability
11 to obtain employment up there. And the argument
12 that she can take care of him even if he doesn't
13 have a job, I don't see how that helps him meet
14 that condition, if that condition is in place.

15 The other thing is that I don't
16 understand how if he goes to Ohio and stays with
17 the sister, the stress of sending money home just
18 goes away. His mother testified yesterday, I
19 asked her, "Will it be a financial hardship for
20 you if he stays in jail?" And she said, "That's
21 an understatement." Now I understand that the
22 sister testified today that she won't allow him
23 to send money back home. But I don't understand
24 how that pressure from Mom miraculously goes
25 away, right? Mom has still said, "I need you. I

1 need your monetary contributions to make our rent
2 and keep our home." So I think that the
3 financial pressure to get a job, either legal or
4 illegal, is still going to be there for him. I
5 don't see how that goes away.

6 So without any proof that he can
7 definitely get a legal job, to me, that
8 strengthens this idea that then he would still be
9 able to look for jobs that meet the skillset that
10 he believes that he has or that he likes to
11 market himself as having. And so if he's able to
12 go up there and not obtain legal employment, or
13 even if he is able to obtain legal employment but
14 it's a minimum-wage job, and he still continues
15 to have this financial pressure from Mom, that
16 sort of factor that clouded his judgement, as his
17 sister testified, I don't see how that goes away.

18 **THE COURT:** So you think that
19 because he would have that pressure that he would
20 then just seek out more jobs as a hitman?

21 **MS. SCHIFERLE:** And probably be
22 more careful about it.

23 **THE COURT:** Okay.

24 **MS. SCHIFERLE:** I mean, that's his
25 skillset. That's what he's put on his resume.

1 So I'm just taking his words. I'm just taking
2 the information that he is giving me and doing my
3 best to try to protect people, Your Honor.

4 **THE COURT:** Okay. Thank you.

5 I want to take just a short recess
6 and look at a couple of things for just a minute.
7 If y'all will bear with me, I will be right back.
8 Thank you. We'll be in recess.

9 **BAILIFF:** All rise.

10 **(WHEREUPON, the Court took a brief recess.)**

11 **BAILIFF:** All rise.

12 **THE COURT:** All right. We're
13 back on the record after a short recess. First
14 of all, I want to take just a minute to thank the
15 lawyers for your efforts. I appreciate your
16 skill and advocacy on these tough issues that the
17 Court has to decide and the benefit of strong
18 counsel is really important in these matters. So
19 I want to acknowledge and thank both the lawyers
20 for your work in this case.

21 I also want to take a minute to
22 thank Ms. Diaz for being here today. I know that
23 there's probably just about anywhere else in the
24 world you'd rather be than the federal courthouse
25 in Nashville, Tennessee on a Wednesday afternoon

1 or any other time for that matter. But it's
2 really important to me for you to know how much I
3 appreciate you making the effort to be here. I
4 know that wasn't easy for you. You live a long
5 way away and the fact that you felt compelled to
6 come down here and your willingness to serve as
7 third-party custodian and your testimony and
8 those factors all mean a lot to me, and I just
9 want you know that. There are a lot of people
10 that come in front of this court who don't have
11 anybody who's willing to stand up for them and
12 support them and be there for them no matter what
13 happens, and the fact that you have made the
14 efforts that you have really means a lot to me,
15 and I want you to know that. I suspect and
16 certainly hope that my appreciation pales in
17 comparison to that of your brother's though
18 because at the end of the day, he's the one
19 you're here for, not me. So I wanted to
20 acknowledge that and thank you for making that
21 effort.

22 The Bail Reform Act ordinarily
23 requires that a defendant be released pending
24 trial unless there are no conditions that will
25 reasonably ensure the appearance of the person at

1 future court proceedings and the safety of the
2 community. The Court's to consider a number of
3 factors, including the nature and circumstance of
4 the offense charged; the weight of the evidence
5 against the defendant; the history and
6 characteristics of the definitely; and the nature
7 and seriousness of the danger posed by the
8 defendant's release. In our society, liberty is
9 the norm and detention prior to trial or without
10 trial is the carefully limited exception, and
11 this Court's mindful of the tension between the
12 Bail Reform Act and the presumption of innocence
13 that applies to Mr. Garcia and all other
14 individuals who are accused of criminal offenses.

15 As the parties are aware, the
16 Court has to determine whether or not the
17 individual poses a likelihood of flight,
18 nonappearance, at future court proceedings, and
19 the issue of dangerousness to the community.
20 I'll first address the issue of flight.

21 The issue of flight is not really
22 a significant issue in this case. The Government
23 didn't substantially argue it, although Ms.
24 Schiferle made allusions to it. The Court
25 doesn't have any evidence before it that would

1 suggest that Mr. Garcia poses a risk of flight.
2 He has ties to the community. He's been a member
3 of the military. There's no evidence of prior
4 nonappearance. Mostly, that's because he doesn't
5 have any prior criminal record that would have
6 involved court appearances. But in any event, to
7 the extent that there's any risk or concern of
8 nonappearance in this case, the Court's satisfied
9 that there are conditions that I could impose
10 that would reasonably ensure his appearance at
11 future court proceedings.

12 With respect to the issue of
13 dangerousness which, as Mr. Fletcher pointed out,
14 is really sort of the meat and potatoes of this
15 determination, in order for a defendant to be
16 preventively detained, the Court must identify an
17 articulatable threat posed by the defendant to an
18 individual or the community. And while that
19 threat need not be one of physical violence, it
20 must be clearly identified. It must be
21 considered in context. And in the final
22 analysis, a detention determination must be made
23 individually based on the evidence before the
24 Court regarding a particular defendant and
25 whether a defendant poses a particular threat

1 depends on the nature of the threat identified
2 and the resources and capabilities of a
3 particular defendant.

4 This case is a difficult case in a
5 lot of regards. The sort of sensational nature
6 of the allegations is unescapable. As Ms.
7 Schiferle notes, this type of alleged conduct of
8 participating in murder-for-hire is extremely
9 concerning. It's obviously concerning to the
10 Government. It's concerning to the Court. The
11 defendant's apparent willingness to engage in
12 this type of conduct is concerning as well. The
13 Court notes as Ms. Schiferle pointed out, over
14 and over again, Mr. Garcia was given opportunity
15 after opportunity to say, no, I'm not going to do
16 this, I don't want to do this, I'm not interested
17 in doing this, I'm going to cut off conversation
18 and communication about this. And he didn't do
19 so. After he was arrested, he indicated that he
20 had a change of heart and didn't intend to do it.
21 But the problem is that no one ever really knows.

22 He was also advised repeatedly
23 that he could reject this at any time. And so
24 presumably, when the rubber met the road, so to
25 speak, and he had to make a determination about

1 whether he was actually going to go through with
2 some sort of conduct, certainly at that point, he
3 could have. And we'll never know for sure what
4 he would have done. We can certainly hope what
5 he would have done, but this Court doesn't have
6 any certainty with regard to what would have
7 happened there.

8 What I do know is that he was led
9 down a path by the undercover agent in this case
10 that, in this Court's opinion, preyed upon some
11 vulnerabilities that this particular defendant
12 had in terms of his level of sophistication and
13 knowledge and also matters that were unknown and
14 unseen by the law enforcement officials that have
15 been testified to with regard to the family
16 situation that he was in and the burdens that
17 were being placed upon him in those
18 circumstances. I think in large measures, it's
19 clear to the parties, and the Court made clear
20 during the hearing that a return to that familial
21 situation would not be an ideal scenario, and the
22 Court indicated I did not believe that would be
23 an appropriate release condition in the case,
24 which is what led to Ms. Diaz being called as a
25 witness in this matter and offered as a third-

1 party custodian.

2 As concerning as those facts are,
3 as I indicated, the threat has to be considered
4 in full context, given consideration to the
5 individual as well as their resources and
6 capabilities. And that's where, in a lot of
7 ways, this case takes a totally different turn.
8 The website at issue is referred to, identified
9 in the complaint as a parody website. There's
10 link to that website in the criminal complaint,
11 and the Court's looked at that website in the
12 context of this case. It's almost unimaginable
13 that anybody could look at that website and think
14 it was any way real whatsoever. They offer group
15 discounts and senior discounts. It's just
16 unimaginable, I think as Ms. Diaz talked about,
17 that anybody would take further action upon
18 looking at that, but Mr. Garcia did.

19 And once he did, he started down a
20 path that I think the Government facilitated to a
21 certain extent with regard to its interactions to
22 him. It's significant to me that he was advised
23 that just talking to them was not a crime, when
24 in fact it's using those instrumentalities,
25 communication through the internet and the

1 telephone, that is what he's charged with in this
2 case. And again, it's particularly concerning to
3 me that of all the scenarios that the Government
4 could have come up with for him to engage in this
5 conduct, they chose a scenario that he had just
6 told them that was so concerning and so upsetting
7 to him that he actually considered violence
8 against an individual over it, and that is abuse
9 of a woman. And that's the very scenario that
10 they presented to him as the proposed murder-for-
11 hire scheme in this case.

12 I think that's the significant
13 issue as it relates to determining the danger
14 that Mr. Garcia posed and his release would pose
15 in this case. In my discussion with Ms.
16 Schiferle during argument, I noted that the
17 Government was aware of his desire, intention,
18 belief that he should engage in some sort of
19 violent acts against the girlfriend's abuser, and
20 Ms. Schiferle told me that they weren't concerned
21 about it because they shook hands about it, and
22 they didn't think that that was really a reason
23 to think he was a danger between that time and
24 the time he was arrested in this particular case.

25 I give great weight to that

1 determination by the Government because I
2 recognize that the Government has investigative
3 work to do. They want to try to make cases and
4 that sort of thing. But if the harm that the
5 Government's identified in this case that I have
6 to protect the community from is that Mr. Garcia
7 is going to engage in murderous conduct if I
8 release him, then the fact that he indicated a
9 desire or intent to engage in that type of
10 conduct and the Government decided they didn't
11 really need to do anything about it because they
12 shook hands on it suggests to me that maybe
13 everybody doesn't really think he's as dangerous
14 as he claims himself to be.

15 And I'm persuaded by Mr.
16 Fletcher's argument. There was a whole lot of
17 puffery going on in this case, both from the
18 Government's standpoint in terms of things that
19 they were saying to sort of egg Mr. Garcia on, to
20 identify certain weaknesses that he had with
21 regard to things that would be appealing to him,
22 whether it be financial gain or whether it be a
23 sense of morality, if you will, about actions
24 that an individual should take. But I'm not
25 convinced that there's reason to believe that Mr.

1 Garcia would engage in this conduct but for that
2 type of arrangement and situation. And certainly
3 now understanding the consequences of his conduct
4 and understanding the error of his ways, based
5 upon those facts as well as the facts Mr.
6 Fletcher points out with regard to his lack of
7 prior criminal record, his lack of any
8 information involved with or engaging in criminal
9 conduct, I'm not satisfied that he poses a
10 significant danger to the community in
11 consideration of the particular circumstances
12 around this individual defendant and considering
13 his resources and capabilities.

14 I also, having made those findings
15 and recognizing that there remains a bit of a
16 tension in terms of the potential risk to the
17 community as well as those factors that suggest
18 that he does not pose a danger to the community
19 doesn't necessarily end the inquiry. I still
20 have to determine whether or not there are
21 conditions that would reasonably ensure the
22 safety of the community in this particular
23 circumstance.

24 The defendant has offered Ms. Diaz
25 to serve as a third-party custodian. The Court

1 has heard her testimony. The Court is impressed
2 with Ms. Diaz as a witness. The Court's
3 impressed with Ms. Diaz's level of commitment and
4 competency. The fact that she, apparently on her
5 own after the Court had offered the opportunity
6 for remote proceedings, felt like it was
7 important enough for her to drive all the way
8 down here from Ohio to testify in this case tells
9 me a lot about the kind of person that she is.
10 More importantly, I think when I compare the
11 juxtaposition between Mr. Garcia's other family
12 members and Ms. Diaz, it seems to be an entirely
13 different type of situation and one that is much
14 better for a lot of reasons. The Court believes
15 that Ms. Diaz is a no-nonsense kind of person. I
16 believe that she understands the role and
17 responsibilities of a third-party custodian.
18 She's indicated a willingness to serve in that
19 capacity. I believe she also recognizes some of
20 the limitations that her brother has and how
21 those limitations might have been fed into by his
22 living situation here in Nashville. Ms. Diaz has
23 described her home as being a place that's in a
24 rural area that would be removed from a lot of
25 the potential opportunities that might exist for

1 Mr. Garcia to potentially cause or create a risk
2 to the community. And I think that this, along
3 with other conditions of release, would go a long
4 way toward mitigating any risk that might exist
5 to the community.

6 Having considered all of these
7 matters at length, giving appropriate
8 consideration to the 3142(g) factors, I'm
9 satisfied that there are conditions of release
10 that will reasonably ensure the safety of the
11 community. And therefore, I'm going to order
12 that Mr. Garcia be released subject to the
13 following conditions.

14 Mr. Garcia, I want you to listen
15 closely to me. I'm going to go through these
16 conditions at this time. When I finish this, I'm
17 going to ask you some questions about it. I'll
18 go through it rather quickly, but you will
19 receive a copy of it, and you'll have an
20 opportunity to discuss this and any other matters
21 that you need to with your lawyers.

22 It will be the order of the Court
23 that you will be released subject to the
24 following conditions. You must not violate any
25 federal, state, or local law while on release.

1 You must advise the Court or pre-trial services
2 in writing before making any change of residence
3 or telephone number. You must appear in court as
4 required. If convicted, you must surrendered as
5 direct to serve any sentence the Court might
6 impose.

7 I'm going to order that you be
8 placed in the custody of Heather Diaz. I will
9 order that you submit to supervision by and
10 report for supervision to the pre-trial services
11 office as directed. You are to continue or
12 actively seek employment. You're to surrender
13 your passport to the U.S. Probation Office.
14 You're not to obtain a passport or other
15 international travel documents. You're to abide
16 by the following restrictions on personal
17 association, residence, or travel, meaning your
18 travel be limited to the Southern District of
19 Ohio and the Middle District of Tennessee without
20 prior approval of pre-trial services. You're to
21 avoid all contact, directly or indirectly, with
22 any person who is or may be a victim or witness
23 in the investigation or prosecution of this
24 matter.

25 You're not to possess a firearm,

1 destructive device, or other dangerous weapon.
2 You're not use alcohol excessively. You're not
3 to use or unlawfully possess a narcotic drug or
4 other controlled substance defined by the law
5 unless prescribed by a licensed medical
6 practitioner. You're to submit to testing for
7 prohibited substances if required by pre-trial
8 services. That testing may be used with random
9 frequency and may include urine testing, wearing
10 of a sweat patch, or testing system or any other
11 form of prohibited substance screening or
12 testing. You're not to obstruct, attempt to
13 obstruct, or tamper with the efficiency or
14 inaccuracy of a prohibited substance screening or
15 testing.

16 You're to participate in the
17 following location restriction program and comply
18 with the requirements as directed by pre-trial
19 services, of home detention. You'll be
20 restricted to your residence at all times except
21 for employment, education, religious services,
22 medical, substance abuse, or mental health
23 treatment, attorney visits, court appearances,
24 court-ordered obligations, or other activities
25 approved in advance by pre-trial services.

1 You're to submit to the location monitoring as
2 directed by pre-trial services and comply with
3 all the program requirements and instructions
4 provided for a period of 180 days. You must pay
5 for all or part of the cost of the program based
6 on your ability to pay as determined by pre-trial
7 services.

8 You're to report as soon as
9 possible within 48 hours to pre-trial services
10 every contact with law enforcement personnel
11 including arrests, questioning, or traffic stop.
12 You're to permit pre-trial services to visit you
13 at home or elsewhere at any time and allow the
14 officer to confiscate any contraband in plain
15 view.

16 Violating any of the foregoing
17 conditions on release may result in an immediate
18 issuance of a warrant for your arrest or
19 revocation of your release, an order of
20 detention, and prosecution for contempt in court,
21 and could result in imprisonment, a fine, or
22 both.

23 While on release if you commit a
24 federal felony offense, the punishment judicial
25 prison term of not more than ten years, and for a

1 federal misdemeanor offense punishment judicial
2 term of not more than one year. The sentence
3 will be consecutive, meaning in addition to any
4 other sentence you receive. It is a crime
5 punishable up to ten years in prison and \$250,000
6 fine or both to obstruct a criminal
7 investigation, tamper with a witness, victim, or
8 informant, retaliate or attempt to retaliate
9 against a witness, victim, or informant, or
10 intimidate or attempt to intimidate a witness,
11 victim, juror, informant, or officer of the
12 court. The penalties for tapering, retaliation,
13 or intimidation are significantly more serious if
14 they involve the killing or attempted killing.

15 If after release you knowingly
16 fail to appear as the conditions of release
17 require or surrender to serve a sentence, you may
18 be prosecuted for failure to appear. An
19 additional punishment may be imposed if you're
20 convicted of an offense punishable by a term of
21 imprisonment of five years or more but less than
22 15, you'll be fined not more than \$250,000, or
23 imprisoned for not more than five years or both.
24 For a misdemeanor, you'd be fine not more than
25 \$100,000 or imprisoned for not more than one year

1 or both. The term of imprisonment for failure to
2 appear or surrender will be consecutive to any
3 other sentence you receive.

4 Ms. Diaz, if I could ask you to
5 step back up, please, and I'm going to pass the
6 order setting conditions of release down. Mr.
7 Fletcher, if you could assist Ms. Diaz in
8 executing the document at the appropriate place
9 on page 2 at the top.

10 **THE COURT:** Wait right here, Ms.
11 Diaz. Mr. Fletcher, if you have your client go
12 ahead and execute the document at page 3 on the
13 bottom.

14 The Court's in receipt of the
15 order setting conditions of release executed here
16 in open court today by Heather Diaz, whereas she
17 agrees to supervise the defendant and use every
18 effort to ensure the defendant's appearance at
19 all court proceedings and to notify the Court
20 immediately if the defendant violates a condition
21 of release or is no longer in her custody.

22 Ms. Diaz, is this your agreement,
23 and do you continue to commit to that agreement
24 to the Court?

25 **MS. DIAZ:** I do.

1 **THE COURT:** And you understand
2 that if you violate your obligations to the Court
3 that you could be held personally responsible?

4 **MS. DIAZ:** I do.

5 **THE COURT:** Does anything about
6 any of that or anything else that's happened
7 cause you any hesitation or make you want to
8 rethink your decision to serve as the third-party
9 custodian?

10 **MS. DIAZ:** No.

11 **THE COURT:** All right. Thank you,
12 ma'am.

13 **MS. DIAZ:** Thank you.

14 **THE COURT:** The document's also
15 been executed here in open court by the
16 defendant, acknowledging that he's a defendant in
17 this case, that he's aware of the conditions of
18 release. He promises to obey all the conditions
19 of release, to appear as directed, and surrender
20 to serve any sentence imposed and that he's aware
21 of the penalties and sanctions set forth in the
22 document that I reviewed. This will be the order
23 of the Court. Mr. Garcia is being released
24 subject to these conditions pending any
25 additional processing that may be required by the

1 marshals.

2 Mr. Garcia, I want you to know
3 that first of all, not everybody who come to
4 federal court gets released. Obviously, the
5 Government believed that you should be detained
6 and they have vigorously asserted that position.
7 And while I disagree, it doesn't change the fact
8 that what you're charged with is extremely
9 serious. And as serious as what you're charged
10 with is your actual conduct. And I think that
11 you need to understand that the Court's going to
12 release you under some very strict conditions
13 here.

14 And it's very important that you
15 comply with all of these conditions. Mr.
16 Fletcher and Ms. Alpert will tell you the most
17 important thing you can do between now and the
18 time you resolve this case is to sleep at the
19 foot of the cross and not have any more problems
20 with anything and that you not violate any of
21 these conditions of release because if you do,
22 you're going to end up right back there in that
23 green jumpsuit, and it's going to severely impede
24 your ability to aid in the defense of your case,
25 and it's also not going to be particularly

1 helpful for the outcome of your case, whatever
2 that may be.

3 If all of that is not motivation
4 enough, I certainly hope that your sister's
5 commitment and willingness to be here and stand
6 up for you and to serve as third-party custodian
7 will add to that feeling. Because I hope you
8 wouldn't want to do anything that puts her in a
9 difficult position where she could ultimately get
10 in trouble for something that you're doing. So I
11 think it's very important that you understand
12 that and that you comply with these conditions of
13 release.

14 All right. That'll be the order
15 of the Court. Ms. Schiferle, is there anything
16 further from the Government's standpoint?

17 **MS. SCHIFERLE:** Yes, Your Honor.
18 The Government intends to appeal. Will you grant
19 a stay for 24 hours?

20 **THE COURT:** I'll give you until
21 10:00 tomorrow.

22 **MS. SCHIFERLE:** 10:00 tomorrow
23 morning?

24 **THE COURT:** Yes.

25 **MS. SCHIFERLE:** Thank you.

1 **THE COURT:** Mr. Fletcher?

2 **MR. FLETCHER:** Your Honor,
3 obviously, I would disagree with that you've
4 already, I don't think that there's a legal basis
5 for a stay. Just for the record, Your Honor,
6 you've already determined that he should be
7 released. I don't think there's anything legally
8 that entitles them to a stay, Your Honor. But I
9 understand the Court's concern. I understand
10 you're trying to balance the interest of both the
11 Government and the defendant, but I just want to
12 put that on the record for now. But other than
13 that, Your Honor, that's it.

14 **THE COURT:** All right. Well, it's
15 3:00 in the afternoon. If I denied the motion,
16 that just means everybody's going to have to
17 break their neck to get to the district court.
18 So I accept the Government's word that their
19 intention to appeal the decision, and I think
20 that a stay until tomorrow morning until 10:00 is
21 reasonable and provides adequate time for
22 everybody to do what they need to do and what
23 they think they need to do in this case.

24 Mr. Fletcher, anything further for
25 your client?

1 **MR. FLETCHER:** Nothing further,
2 Your Honor. Thank you.

3 **THE COURT:** All right. Very well.
4 We'll be in recess. Thank you all.

5 **(WHEREUPON, the HEARING was adjourned.)**
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CAPTION

The foregoing matter was taken on the date, and at the time and place set out on the title page hereof.

It was requested that the matter be transcribed from an audio recording and that the same be reduced to typewritten form.

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SIGNATURE AND DELIVERY OF CERTIFIED TRANSCRIPT

I, **KATHRYN REED**, do hereby certify that the
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and ability; that there is no relation nor employment
by any attorney or counsel employed by the parties
hereto, nor financial or otherwise interest in the
action filed or its outcome.

This transcript and certificate have been
digitally signed and securely delivered through our
encryption server.

IN WITNESS HEREOF, I have here unto set my hand
this 22ND day of APRIL, 2023.



/s/ KATHRYN REED

TRANSCRIBER

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